

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: February 13, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Enel S.p.A.

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Application Serial No. 79283272

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Vic Lin of Innovation Capital Law Group, LLP,
for Enel S.p.A.

Lee-Anne Berns, Trademark Examining Attorney, Law Office 118,
Michael W. Baird, Managing Attorney.

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Before Bergsman, Lykos, and Lynch,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Enel S.p.A. (“Applicant”) seeks registration on the Principal Register of the mark JUICEPASS (in standard characters) for “remote payment services; issuance of prepaid cards and tokens of value,” in International Class 36.¹

The Examining Attorney refused to register Applicant’s mark on two separate grounds. First, registration is refused under Section 2(d) of the Trademark Act,

¹ Application Serial No. 79283272 was filed on October 11, 2019, under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f, as a request for an extension of protection under the Madrid Protocol based on International Registration No. 1525102.

15 § 1052(d), on the ground that Applicant's mark so resembles two trademarks registered on the Principal Register for the word JUICE listed below, owned by the same entity, both for "issuing prepaid debit cards; issuing prepaid credit cards; pre-paid purchase card services, namely, processing electronic payments through pre-paid cards; financial services, namely, funding online cash accounts from prepaid cash cards, bank accounts and credit card accounts; issuing stored value cards; financial services, namely, providing on-line stored value accounts in an electronic environment; stored value prepaid card services, namely, processing electronic payments made through prepaid cards," in International Class 36, as to be likely to cause confusion:

- Registration No. 5385618 for JUICE in standard characters; and
- Registration No. 5385619 for JUICE and design, reproduced below:



Registrant describes its mark as follows:

Color is not claimed as a feature of the mark. The mark consists of two tear drops followed by the term "JUICE".

The USPTO registered both marks on January 23, 2018.

The Examining Attorney also required Applicant to submit an acceptable definite and properly classified identification of services pursuant to Trademark Rule 2.32(a)(6). According to the Examining Attorney, the original identification and

subsequent amendments are unacceptable. Applicant failed to address this issue in its appeal. As Applicant has not complied with the requirement to submit an acceptable identification, as the second ground, the Examining Attorney refused to register Applicant's mark under Section 1(b)(2) of the Trademark Act, 15 U.S.C. § 1051(b)(2); 37 C.F.R. § 2.32(a)(6).

When we cite to the prosecution history, we refer to the USPTO Trademark Status and Document Retrieval (TSDR) system in the downloadable .pdf format. When we cite to the briefs, we refer to TTABVUE, the Board's docket system by docket entry and page number (e.g., 4 TTABVUE 7).

I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address an evidentiary matter. The Examining Attorney objects to the list of third-party registrations and one pending application Applicant refers to for the first time in its brief on the grounds that the evidence is untimely and the third-party registrations are not submitted in the proper format.²

The record in an application should be complete prior to the filing of an appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). The list of third-party registrations and pending application Applicant submitted with its brief is untimely.

Also, the Board does not take judicial notice of registrations, and the submission of a list of registrations does not make these registrations part of the record. *In re 1st*

² Examining Attorney's Brief (12 TTABVUE 5) (citing Applicant's Brief, pp. 5-6 (10 TTABVUE 10-11)).

USA Realty Prof'ls, Inc., 84 USPQ2d 1581, 1583 (TTAB 2007); *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1974); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1208.02 (“[T]he Board does not take judicial notice of records residing in the Patent and Trademark Office.”). To make registrations of record, copies of the registrations or the complete electronic equivalent (i.e., complete printouts taken from the USPTO’s Trademark database) must be submitted. *In re Ruffin Gaming LLC*, 66 USPQ2d 1924, 1925 n.3 (TTAB 2002); *In re Volvo Cars of N. Am. Inc.*, 46 USPQ2d 1455, 1456 n.2 (TTAB 1998); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1561 n.6 (TTAB 1996); *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 n.3 (TTAB 1994).

We sustain the objection and do not consider the list of third-party registrations and pending application in Applicant’s brief.

II. Likelihood of Confusion

Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), prohibits the registration of a mark that:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

We base our determination under Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, referred to as “*DuPont* factors”);

see also In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). “In discharging this duty, the thirteen *DuPont* factors ‘must be considered’ ‘when [they] are of record.’” *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997) and *DuPont*, 177 USPQ at 567). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at *3 (Fed. Cir. 2020) (citing *Dixie Rests.*, 41 USPQ2d at 1533).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). “Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because the ‘fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.’” *In re Embiid*, 2021 USPQ2d 577, at *10 (TTAB 2021) (quoting *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)). *See also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir.

2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods [or services].”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004).

A. The similarity or dissimilarity and nature of the services

Applicant originally applied to register its mark for “remote payment services; issuance of prepaid cards and tokens of value.” During prosecution, Applicant amended the identification of services to “remote payment services, namely, services that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner.” The Examining Attorney rejected the proposed amendment as indefinite. *See* the discussion regarding the identification of services below. Because the Examining Attorney did not accept the proposed amendment, the operative identification of services is the identification as originally filed. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1402.07(d) (2022) (“If the applicant proposes an amendment to the identification of goods or services, and the examining attorney determines that the amendment is unacceptable, the examining attorney should refer to the identification of goods or services before the proposed amendment to determine whether any later amendment is within the scope of the identification. In such a case, the applicant is not bound by the scope of the language in the proposed amendment but, rather, by the language of the identification before the proposed amendment.”).

As noted above, Registrant's identification of services is "issuing prepaid debit cards; issuing prepaid credit cards; pre-paid purchase card services, namely, processing electronic payments through pre-paid cards; financial services, namely, funding online cash accounts from prepaid cash cards, bank accounts and credit card accounts; issuing stored value cards; financial services, namely, providing on-line stored value accounts in an electronic environment; stored value prepaid card services, namely, processing electronic payments made through prepaid cards."

Applicant's "remote payment services" is broad enough to encompass Registrant's "financial services, namely, providing on-line stored value accounts in an electronic environment," "processing electronic payments made through prepaid cards," and issuing prepaid debit and credit cards because they all include processing electronic payments.³ Therefore, these services are legally identical. In addition, Applicant's "issuance of prepaid cards" is legally identical to Registrant's "issuing prepaid debit cards; issuing prepaid credit cards."

This *DuPont* factor weighs in favor of finding a likelihood of confusion.

³ Even if we consider Applicant's amended identification of services (i.e., "remote payment services, namely, services that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner"), we would find the services closely related because Registrant's "financial services, namely, providing on-line stored value accounts in an electronic environment," "processing electronic payments made through prepaid cards," and issuing prepaid debit and credit cards could facilitate paying for electronic vehicle charging. See EV Meter website (evmeter.com), EVSE website (evsellc.com), and ChargePoint website (chargepoint.com). January 20, 2022 Denial of Request for Reconsideration (TSDR 7-13, 30-31, and 34-36).

B. Established, likely-to-continue channels of trade and classes of consumers

Because the services in the application and the cited registration are in part legally identical, we presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (identical goods are presumed to travel in same channels of trade to same class of purchasers) (cited in *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (“With respect to similarity of the established trade channels through which the goods reach customers, the TTAB properly followed our case law and ‘presume[d] that the identical goods move in the same channels of trade and are available to the same classes of customers for such goods....”); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1745 (TTAB 2018), *aff’d mem.* (No. 18-2236) (Fed. Cir. September 13, 2019) (“Because the services described in the application and the cited registration are identical, we presume that the channels of trade and classes of purchasers are the same.”).

This *DuPont* factor weighs in favor of finding there is a likelihood of confusion.

C. The similarity or dissimilarity of the marks

We now turn to the *DuPont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s*, 126

USPQ2d at 1746 (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

In comparing the marks, we are mindful that where, as here, the services are in part legally identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the services. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Prod. Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai*, 127 USPQ2d at 1801 (quoting *Coach Servs.*, 101 USPQ2d at 1721); *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012).

We keep in mind that “[s]imilarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)).

We focus our analysis on Registrant's standard character mark for JUICE because in the other cited mark, the design element in the JUICE and design mark contains an additional point of difference from Applicant's mark. That is, if confusion is likely between Applicant's mark and the cited standard character mark, there is no need for us to consider the likelihood of confusion with the other cited mark; the standard character marks would be a sufficient basis for us to affirm the refusal of registration. Conversely, if there is no likelihood of confusion between Applicant's mark and the cited mark in standard character form, then there would be no likelihood of confusion with the mark with design elements. *See, e.g., North Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1225 (TTAB 2015); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

Applicant is seeking to register the mark JUICEPASS and the mark in the cited registration is JUICE. The marks are similar in appearance and sound because they share the word "Juice," which comes first in Applicant's mark. *See In re Detroit Athletic*, 128 USPQ2d at 1049 ("the identity of the marks' two initial words is particularly significant because consumers typically notice those words first"). In this regard, Applicant's mark encompasses Registrant's entire mark. While there is no explicit rule that likelihood of confusion automatically applies where a junior user's mark contains in part the whole of another mark, the fact that Applicant's mark encompasses Registrant's mark increases the similarity between the two. *See e.g., China Healthways Inst. Inc. v. Xiaoming Wang*, 491 F.3d 1337, 83 USPQ2d 1123, 1125 (Fed. Cir. 2007) (applicant's mark CHI PLUS is similar to opposer's mark CHI

both for electric massagers); *Coca-Cola Bottling Co. of Mem., TN, Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) (applicant's mark BENGAL LANCER for club soda, quinine water and ginger ale is likely to cause confusion with BENGAL for gin); *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (CCPA 1972) (WEST POINT PEPPERELL and griffin design for fabrics is likely to cause confusion with WEST POINT for woolen piece goods); *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at *6-7 (TTAB 2019) (respondent's mark ROAD WARRIOR is similar to petitioner's mark WARRIOR); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (applicant's mark VANTAGE TITAN for medical magnetic resonance imaging diagnostic apparatus confusingly similar to TITAN for medical ultrasound diagnostic apparatus).

With respect to the meaning and commercial impressions of the marks, Applicant concedes that "the meaning of 'juice' in the cited registrations bears some relation to money."⁴ The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed February 8, 2023) defines "Juice," inter alia, as an "enabling force or factor."⁵ When defined as such, the MERRIAM-WEBSTER THESAURUS (merriam-webster.com/thesaurus) (accessed February 8, 2023) lists "credit" as a synonym "as in trust – the right to take possession of goods before paying for them."⁶ The MERRIAM-

⁴ Applicant's Brief, p. 12 (10 TTABVUE 17).

⁵ The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *2 n.17 (TTAB 2019).

⁶ The Board may take judicial notice of words listed in a thesaurus. *In re Wells Fargo & Co.*, 231 USPQ 116, 117 (TTAB 1986)

WEBSTER DICTIONARY defines “Pass,” *inter alia*, as “a means (such as an opening, road, or channel) by which a barrier may be passed or access to a place may be gained.”⁷

When “Juice” is used in connection with Applicant’s “remote payment services; issuance of prepaid cards and tokens of value” or Registrant’s “issuing prepaid debit cards; issuing prepaid credit cards; pre-paid purchase card services, namely, processing electronic payments through pre-paid cards; financial services, namely, funding online cash accounts from prepaid cash cards, bank accounts and credit card accounts,” it suggests purchasing on some sort of credit or through some means other than cash. When Applicant adds the word “Pass” to create the term JUICEPASS for those same services, the meaning and commercial impression created by the term JUICEPASS is the means by which payment may be made. Thus, the meaning and commercial impression of JUICE and JUICEPASS is similar.⁸

⁷ January 20, 2022 Denial of Request for Reconsideration (TSDR 37).

⁸ Applicant appears to be unaware that the Examining Attorney rejected its proposed amendments to the identification of services and that the operative identification of services remains the original identification of services in the application as filed (i.e., “remote payment services; issuance of prepaid cards and tokens of value”). *See* the explanation in the analysis of the similarity or dissimilarity of the services above. Applicant assumes that we are comparing the cited mark with JUICEPASS for “remote payment services, namely, services that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner.” Thus, Applicant contends that JUICEPASS “harkens back to the old school concept of a bus pass or subway pass, but modernized for electric vehicle drivers in current times.” Applicant’s Brief, p. 11 (10 TTABVUE 16). In other words, JUICEPASS engenders the commercial impression “of a modern-day version of a transportation pass that is specifically tied to electric vehicle charging. Applicant’s mark is reminiscent of classic passports and bus passes, but morphed to apply to innovative remote payment services for charging electric vehicles.” *Id.* at p. 12 (10 TTABVUE 17). While the proposed amended identification of services would add a different nuance to the meaning and commercial impression engendered by Applicant’s mark, they still would remain similar to the meaning of Registrant’s mark because they both suggest payment through some means of credit other than cash.

We find that Applicant's mark JUICEPASS is similar to the registered mark JUICE and therefore, this *DuPont* factor weighs in favor of finding a likelihood of confusion.

D. Conclusion

Because the marks are similar, the services are in part legally identical and, therefore, we presume they are offered in the same channels of trade to the same classes of consumers, we find that Applicant's mark JUICEPASS for "remote payment services; issuance of prepaid cards and tokens of value" is likely to cause confusion with the registered mark JUICE for "issuing prepaid debit cards; issuing prepaid credit cards; pre-paid purchase card services, namely, processing electronic payments through pre-paid cards; financial services, namely, funding online cash accounts from prepaid cash cards, bank accounts and credit card accounts; issuing stored value cards; financial services, namely, providing on-line stored value accounts in an electronic environment; stored value prepaid card services, namely, processing electronic payments made through prepaid cards."

III. Identification of Services

As noted above, the Examining Attorney also refused to register Applicant's mark because Applicant refused to comply with the requirement to submit an acceptable identification of services. Applicant did not address the identification of services refusal in its appeal brief, nor did Applicant file a reply brief to address the issue after the Examining Attorney discussed it in her brief. Applicant's failure to address this refusal is a sufficient basis, in itself, for considering the issue waived, affirming the

refusal of registration of Applicant's mark, and deeming moot the rejection of Applicant's proposed amendment to its recitation of services. *In re DTI P'ship, LLP*, 67 USPQ2d 2d 1699, 1701-02 (TTAB 2003). Nonetheless, we exercise our discretion to determine below the merits of the amendment to the identification of services.

A brief history of the prosecution of the application is helpful.

- The identification of services in the application as filed is “remote payment services; issuance of prepaid cards and tokens of value”;

- In the April 17, 2020 Office Action, the Examining Attorney rejected the identification of services as being indefinite and overbroad requiring Applicant to specify the common name of the “remote payment services, i.e., processing credit card payments, in Class 036.”⁹ The Examining Attorney made the following suggestion:

International Class 036: “Remote payment services, ***namely, {specify, i.e., processing of credit card payments};*** issuance of prepaid ***credit*** cards and tokens of value”.¹⁰

- In its November 3, 2020 response, Applicant amended the identification of services to read as follows: “remote payment services, namely services that allow customers to pay for electric vehicle charging in either a subscription of per-use manner; issuance of prepaid credit cards and tokens of value”;¹¹

- In the March 8, 2021 Office Action, the Examining Attorney refused to accept the proposed amendment to the identification of services because “remote payment

⁹ April 17, 2020 Office Action (TSDR 4).

¹⁰ April 17, 2020 Office Action (TSDR 5).

¹¹ November 2, 2020 Response to Office Action (TSDR 2 and 5).

services, namely services that allow customers to pay for electric vehicle charging in either a subscription of per-use manner” “is indefinite and must be clarified because it is too broad and could include services classified in other international classes. (Internal citation omitted). In particular, this wording could encompass some type of billing services in International Class 035 or some type of payment processing, or pre-paid card services in Class 036.” The Examining Attorney made the following suggestion:

International Class 036: “Remote payment services ~~namely, services~~ that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner, *namely, {clarify services in Class 036, i.e., remote payment transaction processing services for electric vehicle charging services, electronic payment services involving electronic processing and subsequent transmission of bill payment data for electric vehicle charging services}*; issuance of prepaid credit cards and tokens of value”.¹²

- In its September 8, 2021 Request for Reconsideration, Applicant amended its identification of services by deleting the “issuance of prepaid credit cards and tokens of value.” Applicant’s proposed identification of services reads as follows: “remote payment services, namely, services that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner”;¹³

- In the January 20, 2022 Denial of the Request for Reconsideration, the Examining Attorney refused to accept Applicant’s proposed amended identification

¹² March 8, 2021 Office Action (TSDR 6-7).

¹³ September 8, 2021 Request for Reconsideration (TSDR 2, 5 and 7).

of services because it “remains indefinite and must be clarified because it is too broad and could include services classified in other international classes.”¹⁴

Specifically, applicant must indicate what the “services” are “*that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner*”. Applicant must amend the identification to specify the common commercial or generic name of the services. *See* TMEP §1402.01. If the services have no common commercial or generic name, applicant must describe or explain the nature of the services using clear and succinct language. *See id.*

As drafted, this wording could identify some type of administrative billing or subscription service in International Class 035, an online nondownloadable software application/solution to enable payment at electric vehicle charging stations in Class 042, or some type of payment processing, bill payment, or issuing pre-paid card services in Class 036. For example, “*Pre-paid purchase card services, namely, processing electronic payments made through prepaid card*”, “*Charge card and credit card payment processing services*”, “*issuing prepaid credit cards*”, “*issuing stored value cards*”, and “*payment transaction processing services*” are services classified in Class 036.¹⁵

The Examining Attorney suggested the following identification of services, if accurate:

International Class 036: “Remote payment services namely, services that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner, *namely, {specify services in Class 036 by common commercial name, i.e., remote payment transaction processing services for electric vehicle charging services, electronic processing of credit card transactions and electronic payments via a global computer network for electric vehicle*

¹⁴ January 20, 2022 Denial of Request for Reconsideration (TSDR 5).

¹⁵ January 20, 2022 Denial of Request for Reconsideration (TSDR 5).

charging services, issuing prepaid credit cards that allow customers to pay for electric vehicle charging in either a subscription or a per-use manner}”.¹⁶

The Examining Attorney clearly explained the basis for requiring a more definite identification of services and even provided suggestions for Applicant’s consideration. Accordingly, after careful consideration of the prosecution history and the Examining Attorney’s explanation, we find Applicant’s original and proposed amended identifications of services are deficient because the services listed could fall into more than one International Class.

We affirm the refusal to register Applicant’s mark on the ground that Applicant failed to comply with the requirement to provide a more definite identification of services.

Decision: We affirm the refusals to register Applicant’s mark JUICEPASS.

¹⁶ 16 January 20, 2022 Denial of Request for Reconsideration (TSDR 5).